FILE COPY

No. 224

IN THE

Supreme Court of the United States

OCTOBER TERM, 1936

OSAKA SHOSEN KAISHA LINE,
Claimant of the Steamship "SANTOS MARU",
Petitioner,

vs.

UNITED STATES OF AMERICA

BRIEF FOR PETITIONER

On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit

---

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BRIEF STATEMENT OF THE CASE

The Steamship "Santos Maru," belonging to the Osaka Shosen Kaisha Line, arrived at the port of New Orleans, Louisiana, on June 11th, 1932, having as a third class passenger one Salvatore Sprovieri, an alien en route from Brazil to Japan on a through ticket, with no visa entitling him to enter the United States. At New Orleans the immigration officers served

upon the master an order in writing instructing him to detain all third class passengers aboard the vessel at all ports of the United States. On June 19, 1932, the third class passenger Salvatore Sprovieri escaped from the vessel, through the negligence of the officers and crew of said steamship the District Court found upon demurrer. The immigration authorities were notified of the escape by the agents of the vessel; the alien was subsequently arrested and deported upon another vessel of the petitioner. (R., 7-8, 13.)

The Secretary of Labor, considering it impracticable to proceed by criminal action, instituted this libel *in rem* under Sec. 146, Title 8, Mason's U. S. C., (Section 10 of the Act of February 5, 1917, as amended by the Act of May 26, 1924, Section 27) for failure to prevent the landing of the alien at a time and place other than that designated by the immigration authorities. (R., 2-4.)

Upon demurrer, the District Court found the facts as outlined above and dismissed the libel. (R., 6-9.)

The United States appealed to the Circuit Court of Appeals for the Fifth Circuit. This Court distinguished the case of Taylor vs. United States, 207 U. S. 120, 28 S. Ct. 53, 52 L. Ed. 130, held the rule promulgated by the Commissioner General under which the order was served upon the master of the SS Santos Maru reasonable, and declined to follow the decision of the Circuit Court of Appeals for the Second Circuit in The Havana 63 F. (2d) 812 (CCA 2, 1933), (R., 14-18). Writ of certiorari was thereupon sought.

JURISDICTION

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code (Section 347 (a), Title 28, Mason's U. S. C.).

ASSIGNED ERRORS TO BE URGED:

1. The holding that the immigration authorities have the power under Section 146, Title 8, Mason's U. S. C., to issue orders requiring the detention of aliens aboard a vessel without landing, and not merely the power to promulgate regulations designating times and places for the landing of aliens.

2. The holding that Rule 3 (6) (H), Immigration Rules, January 1, 1930, providing for the procedure to be followed with respect to denying landing privileges to through passengers and notification of masters of the liability to the penal provisions of Section 146, Title 8, Mason's U. S. C., for failure to observe orders so made, is a valid exercise of the power granted the Commissioner General of Immigration under Section 102, Title 8, Mason's U. S. C., to adopt rules and regulations for carrying out the provisions of the immigration laws and is a rule made in accordance with Section 146, Title 8, Mason's U. S. C.

3. The holding that Section 146, Title 8, Mason's U. S. C., applies to the case of "through passengers", i.e., passengers being transported between foreign ports via an American port of call.

4. The holding that the penal provisions of Section 146, Title 8, Mason's U. S. C., are applicable to infractions of Rule 3 (6) (H), Immigration Rules, January 1, 1930.

SUMMARY OF ARGUMENT

1. Section 146, Title 8, Mason's U. S. C., provides for the orderly landing of aliens for examination by compelling transportation agencies to present them only at designated times and places; this section confers no authority upon the immigration authorities to prohibit entirely the entrance or landing of aliens nor to require their detention aboard vessels.

2. Transporting a passenger to a foreign country on a through ticket via an American port of call is not "bringing an alien to the United States" within the meaning of Section 146, Title 8, Mason's U. S. C. (Section 10, Act of February 5, 1917, as amended by Act of May 26, 1924, Section 27).

3. Rule 3 (6) (H), Immigration Rules, January 1, 1930, is not authorized by Section 146. Failure to comply with an order of detention made under said Rule 3 (6) (H) therefore does not subject the persons named in Section 146 to the penal provisions thereof.

1. Section 146, Title 8, Mason's U. S. C., provides for the orderly landing of aliens for examination by compelling transportation agencies to present them only at designated times and places; this section confers no authority upon the immigration authorities to prohibit entirely the entrance or landing of aliens nor to require their detention aboard vessels.

Section 146, Title 8, Mason's U. S. C. (Section 10 of the Act of February 5, 1917, as amended by the Act of May 26, 1924, Section 27)* in substance provides as follows:

> "(a) It shall be the duty of every person . . . bringing an alien to . . . the United States, to prevent the landing of such alien in the United States *at any time or place* other than as designated by the immigration officers. . .

"(b) Proof that the alien failed to present himself *at the time and place designated by the immigration officers* shall be prima facie evidence that such alien has landed in the United States at a time or place other than as designated by the immigration officers."

*Section 146, Title 8, Mason's U. S. C.: *Prevention of unauthorized landing of aliens; prima facie proof of landing.* (a) It shall be the duty of every person, including owners, masters, officers, and agents of vessels of transportation lines, or international bridges or toll roads, other than railway lines which may enter into a contract as provided in Section 102 of this title, bringing an alien to, or providing a means for an alien to come to, the United States, to prevent the landing of such alien in the United States at any time or place other than as designated by the immigration officers. Any such person, owner, master, officer, or agent who fails to comply with the foregoing requirements shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine in each case of not less than $200 nor more than $1,000, or by imprisonment; or, if in the opinion of the Secretary of Labor, it is impracticable or inconvenient to prosecute the person, owner, master, officer, or agent of any such vessel, such person, owner, master, officer, or agent shall be liable to a penalty of $1,000, which shall be a lien upon the vessel whose owner, master, officer, or agent violates the provisions of this section, and such vessel shall be libeled therefor in the appropriate United States court.

(b) Proof that the alien failed to present himself at the time and place designated by the immigration officers shall be prima facie evidence that such alien has landed in the United States at a time or place other than as designated by the immigration officers. (Feb. 5, 1917, c. 29, Sec. 10, 39 Stat. 881; May 26, 1924, c. 190, Sec. 27, 43 Stat. 167).

To arrive at the intention of the legislative body is the cardinal tenet of statutory construction. Smythe vs. Fiske, 23 Wall. 374, 380, 23 L. Ed. 47, 49; United States vs. Oregon, etc. R. Co., 164 U. S. 526, 17 S. Ct. 165, 41 L. Ed. 541; United States vs. Palmer, 3 Wheat. 610, 631, 4 L. Ed. 471, 477; Hawaii vs. Mankichi, 190 U. S. 197, 212, 23 S. Ct. 787, 47 L. Ed. 1016, 12 Am. Crim. Rep. 465. As was said in United States vs. Katz, 271 U. S. 354, 46 S. Ct. 513, 70 L. Ed. 986:

> "All laws are to be given a sensible construction, and a literal application of a statute, which would lead to absurd consequences, should be avoided whenever a reasonable application can be given to it, consistent with the legislative purpose."

And the enactment as a whole can be considered to determine the true intent of the legislative body. United States vs. Katz, supra.

In considering Section 146, it is first apparent that no mention is made in either of its paragraphs of the detention of an alien aboard a vessel or the issuance of orders compelling a master or agent so to detain an alien aboard a vessel. While the phrasing is in negative form, petitioner submits that there can be no doubt that paragraph (a) of the section merely grants to the immigration authorities the power to designate ports of entry and enact regulations respecting times when transportation agencies may present passengers for examination to determine their qualifications as immigrants. It is submitted that the emphasis of the section is upon the words italicized above.

The clearest proof of the intention of the legislature in this respect is to be found in paragraph (b), it is submitted. That section clearly contemplates the designation of a time and place for landing by the immigration officers and certainly does not contemplate the absolute prohibition of landing by those officers. Further, within paragraph (a) of Section 146 reference is made to Section 102. The provision of Section 102 referred to deals with the presentation of aliens for examanination, showing that Congress likewise had in mind in Section 146 the presentation of aliens for examination. (The pertinent portion of Section 102 is: ". . . (The Commissioner General) shall prescribe rules for the entry and inspection of aliens coming into the United States from or through Canada and Mexico so as not unnecessarily to delay, impede, or annoy persons in ordinary travel between the United States and said countries, and shall have power to enter into contracts with transportation lines for the said purpose. . ")

That Section 146 contemplates an examination of persons brought to the United States as immigrants is made abundantly clear by Section 180 (a), Title 8, Mason's U. S. C.* This Section 180 (a) shows quite clearly that the Congress deemed it of great importance that prospective immigrants should present themselves for admission at designated times and places, and the remarkable similarity of language shows quite clearly what was intended by the enactment of Section 146.

*Sec. 180a. *Entry of alien at improper time or place; eluding examination or inspection; misrepresentation and concealment of facts; penalty.* Any alien

who after March 4, 1929, enters the United States at any time or place other than as designated by immigration officials or eludes examination or inspection by immigration officials, or obtains entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact, shall be guilty of a misdemeanor and, upon conviction, shall be punished by imprisonment for not more than one year or by a fine of not more than $1,000, or by both such fine and imprisonment. (Mar. 4, 1929, c. 690, Sec. 2, 45 Stat. 1551.)

Other portions of the immigration act lend strong support to the contention that had Congress intended that the immigration authorities should be empowered by Section 146 to issue general orders of detention that this power would have been set forth in that section in unmistakable language. Section 147 provides as follows, in part:

> *"Detention of aliens for observation and examination; inspectors to report condition of vessel.* For the purpose of determining whether aliens arriving at ports of the United States belong to any of the classes excluded . . . the Commissioner General of Immigration . . . may direct that such aliens shall be detained on board the vessel bringing them, or in a United States Immigration Station at the expense of such vessel . . . a sufficient time to enable the immigration officers . . . to subject aliens to observation and examination . . ."

And Section 167 provides for the detention of alien seamen on board a vessel and provides penalties for failure to detain or to deport such seamen, the language of that section being quite similar to the language used in Section 146 and illustrating quite clearly how

easily Section 146 could have been phrased had it been the intention of the Congress to permit detention orders to be issued under Section 146.

Section 154 likewise provides penalties for the failure to detain aliens unlawfully brought to this country on board a vessel after the master of the vessel was ordered to detain the alien aboard the vessel. In fact, had it not been for the decision of this Honorable Court in United States vs. Nord Deutscher Lloyd, 223 U. S. 512, 32 S. Ct. 244, 56 L. Ed. 531, that this section applied only to cases of vessel owners unlawfully bringing aliens to the United States, under the circumstances of the instant case it probably would be contended that the petitioner was liable under Section 154 for failure to detain the through passenger.

That the Commissioner General of Immigration is himself aware of the meaning of Section 146, under which the vessel was libeled in the instant case, is shown by the order made in the case of United States vs. SS Coamo, 267 U. S. 220, 45 S. Ct. 237, 69 L. Ed. 582. In that case the master was ordered to present the two aliens concerned at Ellis Island. On his failure to do so, this Honorable Court held the vessel liable for a penalty of $1,000 for each alien.

Your petitioner therefore respectfully submits that the intention of the Congress in enacting Section 146 was clearly to provide for the orderly presentation and examination of aliens, did not empower the issuance of detention orders; and it is submitted that the proper construction of Section 146 by the Commissioner

General has received the tacit approval of this Honorable Court in the case of United States vs. SS Coamo, *supra*.

2. Transporting a passenger to a foreign country on a through ticket via an American port of call is not "bringing an alien to the United States" within the meaning of Section 146, Title 8, Mason's U. S. C. (Section 10, Act of February 5, 1917, as amended by Act of May 26, 1924, Section 27).

The words of Section 146, Title 8, Mason's U. S. C., "bringing an alien to the United States" are first construed by this Honorable Court in Taylor vs. United States, 207 U. S. 120, 28 S. Ct. 53, 52 L. Ed. 130, in which a unanimous court speaking through Mr. Justice Holmes said:

> "The reasoning is not long. The phrase which qualifies the whole section is 'bringing an alien to the United States'. It is only 'such' officers of 'such' vessels that are punished. 'Bringing to the United States', taken literally and nicely, means, transporting with intent to leave in the United States and for the sake of transport—not transporting with intent to carry back and merely as incident to employment on the instrument of transport."

This interpretation was followed in construing similar language of Section 145, of Title 8, Mason's U. S. C., by the Circuit Court of Appeals for the Second Circuit in The President Adams (Dollar Steamship Line vs. Elting), 51 F. (2d) 1035, 1931 AMC 1509 (1931), though it may well be noted here that the meaning of the words in that Section is made clearer by the heading, where the section is summarized by denominating it "bringing *in* aliens subject to disability."

More recently, on facts identical with those of the instant case, the Circuit Court of Appeals for the Second Circuit has reaffirmed its view in affirming the holding of the District Court in The Alphonso XIII, etc., 53 F. (2d) 124, on appeal styled The Havana, etc., 63 F. (2d) 812 (1933). In that case certain foreigners were being transported from Mexican ports to Spain by ports of call in the United States, and after issuance of orders to the masters to detain the aliens on board, the aliens escaped into the United States. The Circuit Court of Appeals held that the cases were ruled by the decision in The President Adams, *supra,* and that the repeated adoption by Congress of the section in question without material change following the interpretation given it in Taylor vs. United States, *supra,* brought the construction of the statute within the rule of those decisions which hold that where a statute has been so re-enacted it incorporates existing judicial interpretations, citing United States vs. Cerecedo Hermanos y Compania, 209 U. S. 337, 28 Sup. Ct. 532, 52 L. Ed. 821; Bruce vs. Tobin, 245 U. S. 18, 38 Sup. Ct. 7, 62. L. Ed. 123; Louisville Cement Company vs. Interstate Commerce Commission, 246 U. S. 638, 644, 38 Sup. Ct. 408, 62 L. Ed. 914; Heald vs. District of Columbia, 254 U. S. 20, 23, 41 Sup. Ct. 42, 65 L. Ed. 106.

In The Havana, *supra,* the contention made in the instant case and made the basis of the opinion of the court below was also made, that is, that the amendment of the Act of 1903 by the Acts of 1917 and 1924 avoided the effect of the decision in Taylor vs. United States, *supra,* and made clear Congress' intention to apply Section 146 to cases where an alien comes to

the United States aboard a vessel even though he is traveling on a through ticket and the steamship company brings him to the United States only as incident to transporting him to a foreign country. Both the District Court and the Circuit Court rejected this contention, it being pointed out by the District Court that the amendment made was necessary to provide for the extension of the section to embrace toll roads and bridges as well as steamship companies. The District Court also pointed out that the notices served by the immigration officers were not in accordance with Section 146 because they were detention orders, not orders designating a time or place for landing of aliens as provided by the section.

The context of the Act in which Section 146 occurs adds weight to the view that the words "bringing an alien to, or providing a means for an alien to come to, the United States", mean the bringing of persons to the United States as immigrants and not as passengers intended to be carried away from the United States on the same vessel. Section 142 relates to "Advertisement of employment to aliens, etc.", Section 143 to "Solicitation of immigration by transportation companies", Section 144 to "Bringing in or harboring or concealing certain aliens", Section 145 to "Bringing in aliens subject to disability, or afflicted with disease, and Section 147 to "Detention of aliens for observation and examination; inspectors to report condition of vessel". All of these sections of the Act which surround the section in question undoubtedly deal with immigrants and not mere passengers who are aliens. Section 147, which immediately follows the section in question, refers to the detention of alien immigrants

to see whether they belong to excluded classes, and it irresistibly follows that Section 146 relates also to the landing of persons who are being brought to the United States for the purpose of immigration.

Your petitioner respectfully submits to this Honorable Court that the careful consideration given the statute by the District Court in The Alphonso XIII, *supra,* and by the Circuit Court of Appeals for the Second Circuit in The Havana, *supra,* has led to a correct interpretation of the statute by those courts, and that the opinions of this Honorable Court in Taylor vs. United States, *supra,* and United States vs. Coamo, *supra,* conclude the matter.

3. Rule 3 (6) (H), Immigration Rules, January 1, 1930, is not authorized by Section 146. Failure to comply with an order of detention made under said Rule 3 (6) (H) therefore does not subject the persons named in Section 146 to the penal provisions thereof.

In the instant case the order made by the immigration officer was one of detention, prohibiting the landing of the alien at any port of the United States, and was manifestly made under Rule 3 (6) (H), Immigration Rules, January 1, 1930.* As is pointed out by petitioner above, Section 146 does not provide for the issuance of orders of detention and prohibition and does not deal with "through passengers", and it necessarily follows that Rule 3 (6) (H) is not authorized by Section 146, it therefore did not have the force of law, and a failure to comply strictly with the terms of orders issued thereunder is not punishable by libel brought under Section 146.

*Rule 3 (6) (H): Aliens who are through passengers on vessels touching at ports of the United States

may land temporarily without visaed passports, for the limited period of time during which the vessel lies over in port, in cases where the examining officer is satisfied that they will depart on the vessel at the time it proceeds on the same voyage. In every case the alien shall be informed that he is landed upon that condition. Where the examining officer is not so satisfied he shall notify the master in writing that landing privilege is denied the alien and call the master's attention to the requirements and fine provisions of Section 27 of the Immigration Act of 1924. Aliens landing with the intention of remaining beyond the period for which the vessel is to be at port must present visaed passports and be examined in the same manner and to the same extent as any other alien applying for temporary admission.

By Section 102, Title 8, Mason's U. S. C., the Commissioner General of Immigration is specifically empowered to establish rules and regulations only where such rules are not "inconsistent with law", were it necessary even to refer to the provisions of the statute when it is so clearly established law that an administrative official or an executive department cannot make regulations which are not within the terms of the statute interpreted. Iselin vs. United States, 270 U. S. 245, 46 S. Ct. 246, 70 L. Ed. 566; Merritt vs. Cameron, 137 U. S. 542, 11 S. Ct. 174, 34 L. Ed. 772; Campbell vs. Galeno Chemical Co., 281 U. S. 599, 50 S. Ct. 412, 74 L. Ed. 1063; International R. Co. vs. Davidson, 257 U. S. 506, 514, 42 S. Ct. 179, 66 L. Ed. 341, 343; United States vs. 200 Barrels of Whiskey, 95 U. S. 571, 24 L. Ed. 491. Further, it is a well recognized rule of law that doubtful terms which have acquired through judicial interpretation a well understood legislative meaning are presumed to be used by the legis-

lature in the sense determined by authoritative decisions. The Abbotsford, 98 U. S. 440, 25 L. Ed. 168; Hackfeld & Company vs. United States, 197 U. S. 442, 25 S. Ct. 456, 49 L. Ed. 826. Since the language interpreted in Taylor vs. United States, *supra,* has not been altered, the changes in Section 146 being additions and not corrective amendments, it follows that both by the clear terms of the statute and by the established rules of statutory construction that the Commissioner General could not make regulations respecting "through passengers" under the grant of power contained in Section 146.

A reference to its provisions reveals that the Immigration Act is highly penal in character. Huntington vs. Attrill, 146 U. S. 657, 13 S. Ct. 224, 36 L. Ed. 1123; United States vs. Harris, 177 U. S. at page 309, 20 S. Ct. 609, 611, 44 L. Ed. 780; Wallis vs. Tecchio, 65 F. (2d) 250 (CCA 5, 1933). Even due care to observe the provisions of the statute is insufficient to relieve a carrier from liability. The Nanking, 290 F. 769 (CCA 9, 1923); Lloyd Royal Belge Societe Anonyme vs. Elting, (D. C. N. Y. 1931) 51 F. (2d) 790. There is no general clause providing a penalty for violations of the various parts of the statute, but each part carries its own penalty. Sections 138, 139, 144, 145, 146, 150, 154, 156, 163, 167, 171, Title 8, Mason's U. S. C.; United States vs. SS Coamo, *supra;* The Presidente Wilson, 56 F. (2d) 742 (CCA 2, 1932). As a penal statute, the statute should be construed to apply only to cases coming plainly within its terms. United States vs. Northern Pacific Railroad Company, 242 U. S. 190, 37 S. Ct. 22, 61 L. E. 240.

An interpretation of the statute to uphold orders of detention under Section 146, as in this case, would make a vessel liable for double penalties whenever an alien escapes after a detention order is made, for the vessel would be liable under Section 146 for failure to present the alien at a proper time and place and would also be liable under the Section providing for the issuance of the detention order. Such a construction is opposed to the entire tenor of the Immigration Act, with its specific penalties for each particular offense. Further, if detention orders could be issued under Section 146, these orders would be unlimited in nature since that Section is absolute in terms. This leads to the preposterous conclusion that the other Sections of the Immigration Act are merely directory —regulations could be made by the authorities as they saw fit since they could prohibit any persons they pleased from landing under Section 146.

In short, your petitioner herein respectfully submits that the case comes clearly within the rules laid down by Chief Justice Marshal in the case of United States vs. Wiltberger, 5 Wheat. 76, 92, 5 L. Ed. 37, 42, quoted in Hackfeld & Company vs. United States, *supra,* as follows:

> "The rule that penal laws are to be construed strictly is perhaps not much less old than construction itself. It is founded on the tenderness of the law of the rights of individuals; and on the plain principle that the power of punishment is vested in the legislative, not in the judical department. It is the legislature, not the court, which is to define a crime and ordain its punishment."

Wherefore, petitioner prays that the judgment of the Circuit Court of Appeals herein be reversed and that the judgment of the District Court be affirmed and for such other relief as may be proper.

Respectfully submitted,

J. NEWTON RAYZOR,
ROBERT EIKEL, JR.
Attorneys for Osaka Shosen Kaisha Line.

PROOF OF SERVICE

STATE OF TEXAS,
COUNTY OF HARRIS.

Before me, the undersigned authority, on this day personally appeared J. Newton Rayzor, well known to me, who, after being duly sworn, upon his oath deposed and said:

I am an attorney for Osaka Shosen Kaisha Line, petitioner in the above cause, and acting as such did duly serve upon the Solicitor General of the United States two copies of the brief for petitioner in the above cause. Service was made by mailing to the Solicitor General at Washington, D. C., said copies, by registered mail, return receipt requested.

J. NEWTON RAYZOR.

SWORN TO and subscribed before me, this 7th day of November, A. D. 1936.

Notary Public in and for Harris County, Texas

Notary Public in and for
Harris County, Texas

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In the Supreme Court of the United States

OCTOBER TERM, 1936

No. 224

OSAKA SHOSEN KAISHA LINE, CLAIMANT OF THE STEAMSHIP "SANTOS MARU", PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

The United States does not oppose the issuance of a writ of certiorari in the instant case.

OPINIONS BELOW

The findings of fact and conclusions of law of the District Court appear at R. 16–17. The opinion of the Circuit Court of Appeals (R. 32–36) is reported in 84 F. (2d) 482.

JURISDICTION

The judgment sought to be reviewed was entered June 10, 1936 (R. 36). The petition for a writ of certiorari was filed July 24, 1936. While the peti-

tion for writ of certiorari does not so state, the jurisdiction of this Court is presumably invoked under Section 240 (a) of the Judicial Code.

STATUTE INVOLVED

Immigration Act of February 5, 1917, c. 29, Section 10, 39 Stat. 874, 881, as amended by the Immigration Act of May 26, 1924, c. 190, Section 27, 43 Stat. 153, 167 (U. S. C., Title 8, Sec. 146):

> SEC. 10. (a) That it shall be the duty of every person, including owners, masters, officers, and agents of vessels of transportation lines, or international bridges or toll roads, other than railway lines which may enter into a contract as provided in section 23, bringing an alien to, or providing a means for an alien to come to, the United States, to prevent the landing of such alien in the United States at any time or place other than as designated by the immigration officers. Any such person, owner, master, officer, or agent who fails to comply with the foregoing requirements shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine in each case of not less than $200 nor more than $1,000, or by imprisonment for a term not exceeding one year, or by both such fine and imprisonment; or, if in the opinion of the Secretary of Labor, it is impracticable or inconvenient to prosecute the person, owner, master, officer, or agent of any such vessel, such person, owner, master, officer, or agent shall be liable to a penalty of $1,000, which shall be

a lien upon the vessel whose owner, master, officer, or agent violates the provisions of this section, and such vessel shall be libeled therefor in the appropriate United States court.

(b) Proof that the alien failed to present himself at the time and place designated by the immigration officers shall be prima facie evidence that such alien has landed in the United States at a time or place other than as designated by the immigration officers.

Section 24 of the Immigration Act of 1924, 43 Stat. 166 (U. S. C., Title 8, Sec. 222):

> The Commissioner General, with the approval of the Secretary of Labor, shall prescribe rules and regulations for the enforcement of the provisions of this Act; * * *

See also Section 23 of the Immigration Act of 1917, 39 Stat. 892 (U. S. C., Title 8, Sec. 102).

Rule 3 (H) (6) of the Immigration Rules of January 1, 1930:

> Aliens who are through passengers on vessels touching at ports of the United States may land temporarily without visaed passports, for the limited period of time during which the vessel lies over in port, in cases where the examining officer is satisfied that they will depart on the vessel at the time it proceeds on the same voyage. In every case the alien shall be informed that he is landed upon that condition. Where the examining officer is not so satisfied he shall notify the master in writing that landing privilege is

denied the alien and call the master's attention to the requirements and fine provisions of Section 27 of the Immigration Act of 1924. Aliens landing with the intention of remaining beyond the period for which the vessel is to be at port must present visaed passports and be examined in the same manner and to the same extent as any other alien applying for temporary admission.

QUESTIONS PRESENTED

1. Whether Section 10 of the Immigration Act of 1917, as amended by the Immigration Act of 1924, authorizes the immigration authorities to issue detention orders prohibiting entirely the entrance or landing of aliens, or whether it makes provision merely for securing the proper landing of aliens by compelling transportation agencies to present them only at designated times and places.

2. Whether a steamship is liable to the penalty provided by Section 10 of the Immigration Act of 1917, as amended by the Immigration Act of 1924, for negligence of her officers and crew in allowing an alien to escape and land in the United States without permission of the immigration authorities and in violation of law, such alien having embarked at a foreign port for through passage, via American ports, to another foreign port.

STATEMENT

The facts are not in dispute (R. 29). As found by the District Court, they may be summarized as follows (R. 16–17):

The Santos Maru, belonging to the petitioner, arrived at New Orleans on June 11, 1932, with Salvatore Sprovieri, an alien passenger, on board. This alien passenger was not bound for the United States and was not entitled to enter the United States, but was en route from Brazil to Japan. Upon the arrival of the steamship at New Orleans immigration officers there issued a written order to the steamship to hold the alien on board at all ports of the United States at which such steamship might touch. This order was duly served upon the officers of the steamship. On June 19, 1932, the steamship arrived at Galveston, and the alien passenger was, by the negligence of the steamship and its officers and crew, allowed to escape and land in the United States without the permission of the immigration authorities and in violation of law. Such steamship officers notified the immigration authorities of the escape of the alien passenger, but such steamship sailed before his arrest. Later such alien passenger was arrested in Galveston and deported on another vessel of the petitioner, and thereafter notice was given the steamship line of the intention of the Government to proceed against it and the Santos Maru for violation of Section 10 of the Immigration Act of 1917, as amended by the Immigration Act of 1924. The Secretary of Labor, being of the opinion that it was impractical and inconvenient to prosecute the matter criminally, a libel in rem was filed against the vessel in the United States District Court for the Southern Dis-